IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7463 of 1997

with

SPECIAL CIVIL APPLICATION No 6702 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MENPARA SALES AGENCY

Versus

JUNAGADH NAGARPALIKA

Appearance:

MR MIHIR H JOSHI for Petitioners

Ms Meeta Panchal for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 26/07/2000

ORAL JUDGEMENT

#. In all these matters as identical question of law has been raised by the petitioners, the same are taken up for hearing together and are being disposed of by this common order.

#. In all these matters challenge has been made to the show cause notice given to the petitioners by the Chief Officer of the Junagadh Nagarpalika, Junagadh. These notices are there on the record of Special Civil Applications as Annexures B & D respectively of the same date. The learned counsel for the respondent has raised an objection that the petitions filed against the show cause notice are not maintainable. The learned counsel for the petitioner contended that the show cause notice given by the respondent is wholly without jurisdiction and as such this petition is maintainable and this court may issue writ of prohibition.

#. Shri Mihir Joshi further contended that normally against show cause notice the court is not interfering but only one exception is carved out in catena of decisions of the Hon'ble Supreme Court that where the authority issues show cause notice is totally lacking competence to issue the same a writ of prohibition can be issued.

#. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties. It is true, against the show cause notice, rule is that writ petition is not entertained by this court. In this regard reference may have to the decision of the apex court in the case of Executive Engineer, Bihar State Housing Board Vs. Ramesh Kumar Singh (1996) 1 SCC 327. It is also true that only exception which is carved out to this general rule is where the court is satisfied that the show cause notice given by the authority, it is totally lacking the jurisdiction to issue the same. After going through the contents of the Special Civil Application and the show cause notice, prima facie, it is difficult to say that the authority has no jurisdiction to issue this notice to the petitioners in the present case. However, I am not expressing any final opinion in this respect. This question has to be examined by the authority, if the same is raised before it in reply to the show cause notice by the petitioners. Reply to the show cause notice has already been filed by the petitioner and if all these points are not raised therein it is still open to the petitioners to raise the same and in case those objections are raised by the petitioners, the respondent-authority shall decide the same in accordance with law.

#. In the result, both these Special Civil Applications are disposed of in the terms that the respondent No.3 is directed to pass appropriate order in accordance with law on the show cause notice impugned in this Special Civil Application after considering all the objections made by the petitioners. It is expected of the respondent No.3 to pass a reasoned order in these matters.

Both the Special Civil Applications and Rule therein are disposed of accordingly with no order as to costs. Liberty is granted to the petitioners for revival of the Special Civil Applications, in case, any adverse order is passed by the respondent No.3

(S.K.Keshote, J.)
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